

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of:

COLLIN HUGH VAUGHAN,

Respondent.

OAH number 2010050652

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry as its Decision in the above-entitled matter.

This Decision shall become effective on February 17, 2011.

IT IS SO ORDERED this 18th day of January, 2011



BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

COLLIN HUGH VAUGHAN

Optometrist License No. TPL 12990

Respondent.

Case No. CC-2008-103

OAH No. 2010050652

PROPOSED DECISION

This matter was heard on November 5, 2010, before Rebecca Freie, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), in Sacramento, California.

Complainant, Mona Maggio, Executive Officer of the State Board of Optometry (Board) was represented by Jeffrey M. Phillips, Deputy Attorney General.

Collin Hugh Vaughan, O.D. (respondent) appeared and represented himself.

Oral and documentary evidence was submitted. The record was closed and the matter submitted for decision on November 15, 2010.¹

¹ At the conclusion of the hearing on November 5, 2010, the record was held open to November 15, 2010, to permit the Board to submit its evidence of costs, and to permit respondent to provide OAH with his exact current address, documentation that he resided in a sober living environment in 2010, and any letters of reference. The Board timely submitted its evidence of costs, which is marked as Exhibit 11, and admitted into evidence. Respondent notified OAH of his current address on November 22, 2010. He submitted no documentation of his residence in a sober living environment, and no letters of reference.

FACTUAL FINDINGS²

1. On May 15, 2006, the Board issued Optometrist License No. TPL 12990 to respondent.

2. On October 1, 2009, respondent's license to practice optometry was suspended pursuant to Business and Professions Code section 494, subdivision (b). The suspension was based on two convictions for violation of Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol level of 0.8% or more (DUI)) in 2009, as detailed below. In addition, respondent was arrested for four more alcohol-related incidents between May 18, 2009, and September 16, 2009. An Order on Petition for Interim Suspension Order was issued by OAH on October 28, 2009, OAH Case No. 2009100015. On October 3, and October 9, 2009, prior to the hearing on the Petition for Interim Suspension Order, respondent was again arrested for alcohol-related incidents. Respondent's Optometrist License expired on September 30, 2010.

3. On November 12, 2009, Mona Maggio filed the instant Accusation against respondent in her official capacity as Executive Officer of the Board. Respondent timely filed a notice of defense and this matter was set for hearing pursuant to Government Code section 11506. This case is designated as OAH Case No. 2010050652.

Respondent's Convictions

4. On March 16, 2009, in Alameda County Superior Court, in Case No. 129051-2, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol content of 0.08 percent or more (DUI)). The facts and circumstances of respondent's March 16, 2009 DUI conviction were that on November 11, 2008, at 12:30 a.m., CHP officers in Dublin observed respondent driving in the number one lane and passing surrounding traffic at 92 miles per hour in a 65 miles per hour zone. The officers observed as respondent crossed over the solid yellow line to his left by one tire width for approximately three seconds before re-entering the number one lane. They initiated a stop, and upon approaching the vehicle noted the odor of alcohol. Respondent's eyes were red and watery and his speech was slowed. He admitted he had two beers and a vodka screwdriver. One of the officers explained and demonstrated field sobriety tests. Respondent was unable to perform the field sobriety tests. Initial alcohol testing disclosed a blood-alcohol level of .118 percent. Blood alcohol testing at 1:22 a.m. disclosed a blood-alcohol level of .10 percent.

² The parties stipulated that the Factual Findings contained in the Order on Petition for Interim Suspension issued on October 28, 2009 in OAH Case No. 2009100015, were true. Therefore, Factual Findings 4 through 12, contain information from the Factual Findings in that Order, and have been incorporated in this Proposed Decision.

5. The Court sentenced respondent to serve three days in jail and pay fines. He was granted probation for a term of three years. Pursuant to the terms and conditions of probation, respondent was ordered not to drink alcoholic beverages to excess and not to drive with any measurable amount of alcohol in his blood. He was also ordered to attend and complete "driving under the influence traffic school."

6. On May 18, 2009, in the San Joaquin County Superior Court, Case No. TM 113414 (A), respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b). This conviction arose from a February 28, 2008 arrest by Tracy Police Department officers after respondent was involved in a collision. Respondent had been driving westbound on 11th Street in the City of Tracy when he slammed into a fire hydrant and a tree located near the north sidewalk. Respondent was disoriented and did not know how the accident occurred. His blood-alcohol level was measured at .24 percent.

7. As a result of this conviction, the Court ordered respondent to serve 12 days in jail and to pay fines, fees and restitution. He was granted a three-year probationary term and was ordered to refrain from excessive consumption of alcohol and not to operate a motor vehicle with any measurable amount of alcohol in his blood. He was also ordered to enroll in a nine-month first-time offender alcohol program.

Respondent's Subsequent Arrests in 2009

8. On May 24, 2009, one week after his second DUI conviction, respondent was arrested by the Merced Police Department for violation of Vehicle Code sections 23152, subdivisions (a) and (b), 14601.2, subdivision (A) (driving when privileges suspended or revoked for DUI) and section 21650 (use of the right side to drive except to pass/overtake other vehicle). Respondent was arrested after a police officer observed him driving a white SUV northbound on West Main Street in Merced. Respondent's vehicle straddled the number one and number two lanes for an entire block. Then the officer observed that the vehicle "swerved slowly and gradually in an ever increasing left to right movement" until it crossed over the solid dotted yellow line into the number one lane of opposing traffic. The officer initiated a traffic stop and administered field sobriety tests. Respondent performed poorly. He was arrested and the criminal matter is pending. At the hearing on the petition for interim suspension order, respondent admitted he drove with a suspended license. He testified that several hours prior to his arrest on May 24, 2009, he had consumed several drinks, but he believed that it was safe to drive because several hours had passed since his last drink, and he had eaten.

9. Three weeks later, on June 12, 2009, respondent was again arrested by the Merced Police Department. Respondent had been traveling on Highway 99 and had passed several vehicles at a high rate of speed. He passed the vehicles by driving on the center median. While passing vehicles, he sprayed rocks and gravel on the windshields of two vehicles, shattering the windshields. The victims called 911 and officers were directed to "be on the lookout" for respondent's vehicle. Several officers then observed respondent driving

over 65 miles per hour and using the center median to pass cars. Officers pulled respondent over. He admitted that his driver's license was suspended and that he had been driving at high speeds in an erratic manner. He apologized for this behavior and stated he was in a hurry to attend a graduation. He stated that he believed that a vehicle was trying to race with him and he was just trying to stay out of the other vehicle's way. He smelled of alcohol and was unable to satisfactorily perform field sobriety tests. Preliminary alcohol screening disclosed blood-alcohol levels of .131 percent and .141 percent. Respondent was arrested for driving under the influence and driving with a suspended license. At the hearing on the petition for an interim suspension order, respondent admitted that he had been drinking the night before, but did not realize he was still intoxicated. The criminal matter is pending.

10. Two months later, on August 13, 2009, respondent was again arrested by the Merced Police Department for "driving under the influence while on DUI probation" and driving with knowledge that his driving privilege was suspended or revoked. He was also charged with failing to stop at a stop sign and having a brake light out. Respondent was apprehended after a patrol officer noticed respondent rolling through a stop sign without coming to a full and complete stop. The officer also noted that a brake light was out on respondent's vehicle. The officer initiated a traffic stop and noticed a strong odor of alcoholic beverages coming from the vehicle. Respondent had bloodshot and watery eyes and was unable to successfully complete field sobriety tests. Preliminary alcohol screening disclosed a blood-alcohol content of .10 percent. He was arrested and the criminal matter is pending.

11. On September 16, 2009, the Merced Police Department arrested respondent for drunk and disorderly conduct and disturbing the peace. The criminal matter is pending. At the hearing on the petition for an interim suspension order, respondent testified that he had been out drinking alone on his birthday, and he confronted someone who had directed racist comments toward him.

12. On October 3, 2009, the respondent was arrested and booked through the Stanislaus County Sheriff's Department for being drunk in public. The matter is still pending.

13. On October 9, 2009, the respondent was arrested by the Merced Police Department for drunk and disorderly conduct and disturbing the peace. The status of this matter is unknown.

14. Respondent's criminal convictions for driving under the influence of alcohol are substantially related to the qualifications, functions and duties of an optometrist. His criminal convictions and other arrests involving the excessive use of alcohol manifest his inability to maintain sobriety and his disregard for the lives of others, and are also substantially related to the qualifications, functions and duties of an optometrist.

Respondent's Defenses

15. Respondent testified on his own behalf at the hearing on November 5, 2010. The evidence established that respondent entered an inpatient rehabilitation program on November 24, 2009, and was discharged on December 22, 2009. Following his discharge, he returned to Jamaica to visit family. He admitted that he consumed alcohol at least once during his visit with his family.

16. In February 2010, respondent returned to California, and moved into a house for people recovering from substance abuse. However, he left this sober living environment in April or early May, 2010.

17. Respondent denies that he is an alcoholic, or has a problem with alcohol. Respondent claims that alcohol does not control his life, or make it unmanageable. Instead, he claims that his use of alcohol was due to his attempts to cope with several life-changing events: divorce, eviction, burglary, embezzlement.³ He argues that he was using alcohol to self-medicate to cope with the pain of the negative events that were making his life unmanageable.

18. As evidence that he is not an alcoholic, respondent is very proud that he began drinking in his 20s, and was not arrested for his first DUI until he was 38 years of age. He further testified that because he is now able to "drink like a gentleman," he is not an alcoholic. Respondent testified that after he entered a residential treatment program in November 2009, he was sober "for a very long period of time." The evidence established that this "very long period of time" was actually a period of approximately three months. Respondent's testimony established that he is in deep denial about his problem with alcohol and is not in recovery.

Factors in Justification, Aggravation, Mitigation, and Rehabilitation

19. In order to determine whether and to what extent it is appropriate to discipline respondent's license, it is necessary to weigh and balance respondent's violations of law and excessive use of alcohol, as well as factors in justification, aggravation, mitigation and rehabilitation.

20. Respondent attempts to justify some of his arrests in Merced County by claiming that Merced law enforcement personnel "were out to get [him]." He also claims that people might think he was "under the influence" because his eyes were red, but this was actually due to allergies.

³ Respondent provided background information about his divorce, and testified that he was evicted from the hotel where he was living during the summer of 2010, but did not explain what he meant in referring to events in his life related to burglary and embezzlement.

21. In aggravation, the arrests detailed in Factual Findings 8 through 12, have not been resolved and are still pending. When he began testifying, respondent seemed to think that most of these arrests had been resolved because he has a lawyer, although he could not recall personally making any court appearances for these matters. The evidence established that respondent had a scheduled court appearance in Merced County concerning the arrests detailed in Factual Findings 11 and 12 on November 5, 2010, at the same time he was testifying in this case in Sacramento. Respondent was unaware of this court date until he was shown a court order scheduling the hearing. This inability to keep track of his pending criminal matters evidences a lack of understanding about how serious these charges are, and how they may affect his ability to maintain his license to practice the profession of optometry in the future.

22. In aggravation, respondent admitted that he drank alcohol daily during the summer of 2010. The evidence established that on several occasions, he drank to excess. This violated conditions of probation imposed upon him as a result of his two convictions for driving under the influence in 2009. In addition, respondent was taken into police custody on several occasions between May 4 and August 13, 2010.

23. On May 4, 2010, respondent was arrested for felony vandalism, a violation of Penal Code section 594, subdivision (b)(1). At the hearing, respondent explained that he had gone to his ex-wife's home on that date so that he could visit his minor son. When the occupants (who included his 12 year old son) did not answer the front door, respondent admitted that became angry and hit the door several times which resulted in him punching at least one hole in the door. Respondent was arrested after being interviewed by the police, but he claims that the charges were dropped because he was never given a court date.

24. On May 18, 2010, respondent was taken into police custody in Richmond for Public Intoxication, a violation of Penal Code section 646, subdivision (f). Respondent testified that he had gotten into a dispute with employees of a health club he belonged to in Richmond on that date. The arresting officer reported that respondent showed signs of intoxication at the time of his arrest at approximately 10:00 a.m. The officer reported that respondent "could barely stand[,] [h]is eyes were red and glossy [sic] and he spoke with a slurred speech." Further, the officer stated that he smelled "a strong odor of alcoholic beverage coming from [respondent]'s breath or person." The officer reported that respondent claimed he was at the health club because he was "trying to work off a hangover[.]" Respondent testified that he had been drinking the night before the incident, but not on the day of the incident. Respondent was taken to jail and released after a few hours. Respondent testified that he did not believe that there were any court proceedings related to this arrest.⁴

⁴ Additional evidence was presented by the Board concerning another incident at the health club on May 21, 2010, that resulted in the manager of the health club obtaining a temporary restraining order, but it did not appear that petitioner was arrested, nor was there any evidence that he was intoxicated at the time of this event.

25. Finally, on August 13, 2010, respondent was again arrested for felony vandalism at an Extended Stay America Inn where he was residing in Richmond. Respondent admitted that he was very angry on that date, and in his anger he forcibly removed a heavy glass and metal door from its frame. The police report related to this incident contains statements by the arresting officer that establish that respondent was intoxicated at the time he committed this act of vandalism. Respondent was reported to have "bloodshot watery eyes, slurred speech and an unsteady gait." The officer smelled "a strong odor of alcoholic beverage coming from [respondent's] person." Respondent testified that he might have been drinking that day, and could not say that he had not been drinking. Again, respondent could not explain what the current status was of this arrest—whether a complaint had been filed in Superior Court, or whether the matter had been resolved in some other way. The evidence established that on August 13, 2010, respondent drank to excess and while intoxicated committed an act of vandalism.

26. The evidence established that respondent received inpatient treatment for alcohol abuse in November and December 2009, and moved into a sober living environment thereafter. However, respondent has only attended one Alcoholics Anonymous (AA) meeting since leaving the sober living environment in April or early May 2010. He does not have a sponsor. He continues to consume alcohol, and denies having a problem with alcohol.

27. Respondent stated that he is willing to accept close monitoring by the Board, if the Board permits him to retain his license to practice optometry. In addition, he is willing to stop drinking, if ordered to do so by the Board. However, respondent has had multiple opportunities to put an end to his drinking since November 11, 2008, when he was first arrested for driving under the influence. He has been unable to do this, despite participation in a residential program and a sober living environment, and despite the fact that he has been ordered to abstain from excessive alcohol use by the criminal courts. Respondent continues to deny that he has any problem with alcohol. He has a great deal of work to do to establish rehabilitation.

28. There was no evidence that respondent has ever harmed a patient. However, his continued consumption of alcohol, and his explanations about his multiple contacts with law enforcement in 2009 and the summer of 2010, establish that respondent is unable to control his drinking, and cannot control his behavior, whether or not he is sober. The retention of his license to practice optometry poses a threat to the public.

Costs

29. Complainant established that the reasonable costs of investigation and prosecution of this matter were \$2,040.

30. Complainant prevailed on all of the charges and established that the scope of the investigation was appropriate to the alleged misconduct. Respondent did not have a colorable defense to the charges or to the discipline sought. Respondent testified that he had not been employed for at least two months prior to the November 5, 2010 hearing, and he is

living with a relative. Therefore, respondent established that he was unable to pay a lump sum and that periodic payments are appropriate.

LEGAL CONCLUSIONS

1. Business and Professions Code section 3090 provides that the Board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the Board.⁵

2. Section 3110 provides that the Board may take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct includes:

[¶...¶]

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself ... any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person ... holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person ... holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof...

3. California Code of Regulations, title 16, section 1517, provides in pertinent part:

For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her

⁵ All subsequent statutory references are to the Business and Professions Code, unless otherwise stated.

certificate of registration in a manner consistent with the public health, safety, or welfare.

4. California Code of Regulations, title 16, section 1516, subdivision (b) sets forth the criteria to be considered when determining whether an optometrist has been rehabilitated when he or she is the subject of a proceeding to revoke a license. These criteria are:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

5. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence." *BAJI* 2.62. "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189.) There is clear and convincing evidence that respondent has suffered convictions for driving under the influence of alcohol, and clear and convincing evidence that respondent uses alcohol to an extent and in a manner that is dangerous and injurious to himself, others and the public.

6. Misdemeanor convictions for driving under the influence of alcohol and other indications of alcohol abuse are substantially related to the licensee's ability to practice his or her profession. (*Grannis v. Board of Medical Quality Assurance* (1971) 19 Cal.App.3d 551 [physician disciplined on the basis of two DUI convictions]; *In re Car* (1988) 46 Cal.3d 1089 [State Bar suspended an attorney for two DUI convictions]; *In Re Kelley* (1990) 52 Cal.3d 487 [attorney disciplined for two DUI convictions]; *Griffiths v. Superior court* (2002) 96 Cal.App.4th 757 [physician's license suspended for three DUI convictions].)

7. Pursuant to sections 3090 and 3110, subdivision (k), and California Code of Regulations, title 16 section 1517, cause exists to discipline respondent's license by reason of his misdemeanor criminal convictions of March 16, and May 18, 2009, for driving under the influence of alcohol as set forth in Factual Findings 3 through 7. Respondent does not dispute his convictions. Driving under the influence of alcohol is a crime which, by its very terms, evidences a disregard for one's own safety, and the safety of others. The circumstances of respondent's first conviction involved driving nearly 30 miles per hour over the speed limit of 65, and crossing over the double yellow line into the lane carrying oncoming traffic, creating the risk of a head-on collision. His second conviction involved a traffic accident in which respondent collided with both a tree and fire hydrant. Respondent was fortunate that this accident involved inanimate stationary objects. Respondent displayed a serious lack of judgment when he chose to drive after consuming alcohol, and this reflects on his ability to exercise good judgment in the care of his patients.

8. Pursuant to sections 3090 and 3110, subdivision (l), cause exists to discipline respondent's license by reason of his use of alcoholic beverages to an extent and in a manner dangerous and injurious to himself, others and the public, as set forth in Findings 4 through 28. Respondent testified and admitted drinking and driving when he was arrested for DUIs on May 24, and June 12, 2009, in spite of his recent convictions for driving under the influence. These acts endangered both himself and others. Further, the evidence established that respondent continues to consume alcohol, at times in excess, and therefore he is not complying with the conditions of probation for his DUI convictions. In addition, respondent admitted to two acts of criminal vandalism when angered during the summer of 2010.

Costs

9. Business and Professions Code section 125.3, provides that the Board may request the Administrative Law Judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 17, the reasonable costs of investigation and prosecution of this matter were established as \$2,040. It was established that respondent is unable to make a lump sum payment, in that he is unemployed, and living with others.

Rehabilitation

10. As set forth in the Factual Findings, respondent continues to pose a significant risk to the health and safety of the public due to his continuing abuse of alcohol. He is not now a candidate for a probationary license because of this risk. Further, he denies that he has a problem with alcohol which exacerbates this risk. Although there was no evidence that respondent ever harmed patients as a result of his alcohol abuse, the continuing pattern of arrests for intoxication, and other contacts with law enforcement where the officers stated in reports that respondent appeared to be intoxicated, are very concerning. Further, the circumstances surrounding his two arrests for felony vandalism, evidence an inability to maintain self-control when angry. Finally, although he is on probation for two DUI


convictions, and was ordered as a condition of both probations to refrain from excessive use of alcohol, he has been unable to do so, which shows an unwillingness and inability to comply with court orders. This does not bode well for his compliance with probationary terms and conditions if his license is not revoked. Respondent must first admit that he has an alcohol problem before any treatment program will be successful, and he is unwilling to do so. There is a very high risk of danger to consumers until respondent is in recovery.

ORDER

1. The License to Practice Optometry No. TPL 12990 issued to respondent Collin Hugh Vaughan O.D. is REVOKED pursuant to Legal Conclusions 1 through 8, and 10, separately and together.

2. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,040. Respondent may make periodic payments to the Board, according to a schedule of payment approved by the Board. Said amount shall be paid in full prior to any reinstatement of the License. If respondent fails to pay the amount specified, his License shall remain revoked.

Dated: December 15, 2010


Rebecca Freie
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC-2008-103

13 **COLLIN HUGH VAUGHAN**
3055 Loughborough Drive
Merced, CA 95348

OAH No. 20091000015

14 **Optometrist License No. TPL 12990**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
19 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

20 2. On or about May 15, 2006, the State Board of Optometry issued Optometrist License
21 Number TPL 12990 to Collin Hugh Vaughan (Respondent). On October 1, 2009, Respondent's
22 license was suspended pursuant to Business and Professions Code section 494(b) and remains
23 suspended. The license will expire on September 30, 2010, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the State Board of Optometry (Board), Department
26 of Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.

28 //

1 4. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 5. Section 3110 of the Code states:

6 "The board may take action against any licensee who is charged with unprofessional
7 conduct, and may deny an application for a license if the applicant has committed unprofessional
8 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
9 limited to, the following:

10 "(k) Conviction of a felony or of any offense substantially related to the qualifications,
11 functions, and duties of an optometrist, in which event the record of the conviction shall be
12 conclusive evidence thereof.

13 "(l) Administering to himself or herself . . . or using alcoholic beverages to the extent, or in
14 a manner, as to be dangerous or injurious to the person applying for a license or holding a license
15 under this chapter, or to any other person, or to the public, or, to the extent that the use impairs
16 the ability of the person applying for or holding a license to conduct with safety to the public the
17 practice authorized by the license, or the conviction of a misdemeanor or felony involving the
18 use, consumption, or self administration of any of the substances referred to in this subdivision, or
19 any combination thereof.

20 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Conviction of a Crime)

26 7. Respondent is subject to disciplinary action under sections 490 and 3110(k) in that
27 Respondent has been convicted of crimes substantially related to the qualifications, functions, or
28 duties of an optometrist, as follows:

1 a. On March 16, 2009, Respondent was convicted of violating Vehicle Code
2 section 23152(b) (driving with blood alcohol content of 0.8 % or more) in Alameda County
3 Superior Court Case No. 129051-2, based on his no contest plea. This conviction was based on
4 Respondent's DUI arrest at 0030 hours on November 11, 2008 by Dublin California Highway
5 Patrol State Traffic Officers.

6 b. On May 18, 2009, Respondent was convicted of violating Vehicle Code section
7 23152(b) (driving with blood alcohol content of 0.8 % or more) in San Joaquin County Superior
8 Court Case No. TM 113414(A), based on his no contest plea. This conviction was based on
9 Respondent's DUI arrest at 0211 hours on February 28, 2008 by Tracy Police Department
10 Officers.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct – alcohol abuse)

13 8. Respondent is subject to disciplinary action under section 3110(l), the circumstances
14 are as follows:

15 a. The allegations contained in paragraph seven (7) are incorporated herein by
16 reference.

17 b. On or about May 24, 2009, Respondent was arrested by the Merced Police
18 Department for driving under the influence of alcohol ("DUI"). This matter is still pending.

19 c. On or about June 12, 2009, Respondent was arrested by the California Highway
20 Patrol for DUI. This matter is still pending.

21 d. On or about August 13, 2009, Respondent was arrested by the Merced Police
22 Department for DUI. This matter is still pending.

23 e. On or about September 16, 2009, Respondent was arrested by the Merced
24 Police Department for Disturbing the Peace/ Drunk and Disorderly Conduct. This matter is still
25 pending.

26 f. On or about October 3, 2009, Respondent was arrested by Ceres Police
27 Department for Disturbing the Peace/ Drunk and Disorderly Conduct. This matter is still
28 pending.

1 g. On or about October 9, 2009, Respondent was arrested by the Merced Police
2 Department for Disturbing the Peace/ Drunk and Disorderly Conduct. This matter is still
3 pending.

4 PRAYER

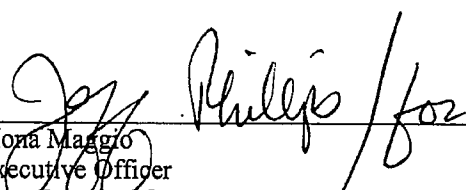
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the State Board of Optometry issue a decision:

7 1. Revoking or suspending Optometrist License Number TPL 12990, issued to Collin
8 Hugh Vaughan.

9 2. Ordering Collin Hugh Vaughan to pay the State Board of Optometry the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 11.12.09


15 _____
16 Mona Maggio
17 Executive Officer
18 State Board of Optometry
19 Department of Consumer Affairs
20 State of California
21 Complainant

22 SA2009101759
23 accusation.rtf
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BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition For
Interim Suspension Order by:

MONA MAGGIO, Executive Officer,
Board of Optometry
Department of Consumer Affairs
State of California,

Petitioner,

v.

COLLIN HUGH VAUGHAN
Merced, CA 95348

Optometrist License No. TLP 12990,

Respondent.

Case No. CC 2008-130

OAH No. 2009100015

**ORDER ON PETITION FOR
INTERIM SUSPENSION ORDER**

(Business and Professions Code section
494)

Administrative Law Judge Jonathan Lew, State of California, Office of
Administrative Hearings, heard this matter in Sacramento, California on October 26, 2009.

Jeffrey M. Phillips, Deputy Attorney General, represented petitioner Mona Maggio.

Respondent Collin Hugh Vaughan appeared on his own behalf.

Documentary evidence, testimony and oral argument were received. The hearing was
closed and the matter was submitted on October 26, 2009.

FACTUAL FINDINGS

1. On October 1, 2009, Mona Maggio, Executive Officer of the Board of
Optometry, Department of Consumer Affairs, State of California (Board), through Attorney
General, Edmund G. Brown Jr. and Deputy Attorney General, Jeffrey M. Phillips, made and
filed a Petition with the Office of Administrative Hearings. The Petition seeks an interim
order suspending Optometrist License No. TPL 12990, pursuant to Business and Professions

Code section 494, subdivision (c). Actual notice of the ex-parte hearing was served on respondent, at three separate addresses, including his current address of record with the Board, by overnight mail delivery on September 28, 2009 and September 29, 2009.¹ Respondent did not appear at the October 1, 2009 ex-parte hearing before Administrative Law Judge Ann Sarli. An Order on Ex-Parte Petition dated October 6, 2009 (Order), was issued by Judge Sarli in which License No. TLP 12990, issued to respondent, was suspended. The Order also set October 26, 2009, as the date for hearing on the Petition for Interim Suspension Order. These proceedings followed.

2. Findings 2 through 9 of the Order are incorporated herein. The Board issued Optometrist License (Certificate of Registration) No. TPL 12990 to respondent on May 15, 2006. Said license will expire on September 30, 2010 unless renewed.

Respondent's Criminal Convictions

3. On March 16, 2009, in Alameda County Superior Court,² respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol content of 0.8% or more (DUI)). The facts and circumstances of respondent's March 16, 2009 DUI conviction were that on November 11, 2008, at 12:30 a.m., Dublin CHP officers observed respondent driving in the number one lane and passing surrounding traffic at 92 miles per hour in a 65 miles per hour zone. The officers observed as respondent crossed over the solid yellow line to his left by one tire width for approximately three seconds before re-entering the number one lane. They initiated a stop and upon approaching the vehicle noted the odor of alcohol. Respondent's eyes were red and watery and his speech was slowed. He admitted he had two beers and a vodka screwdriver. One of the officers explained and demonstrated field sobriety tests. Respondent was unable to perform the field sobriety tests. Initial alcohol testing disclosed a blood-alcohol level of .118 (1.18%). Blood alcohol testing at 1:22 a.m. disclosed a blood-alcohol level of .10 %.

4. The Court sentenced respondent to serve three days in jail and pay fines. He was granted probation for a term of three years. Pursuant to the terms and conditions of probation, respondent was ordered not to drink alcoholic beverages to excess and not to drive with any measurable amount of alcohol in his blood. He was also ordered to attend and complete "driving under the influence traffic school."

5. On May 18, 2009, in the San Joaquin County Superior Court,³ respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b). This conviction arose from a February 28, 2008, arrest by Tracy Police Department Officers after respondent was involved in a collision. Respondent had been

¹ At hearing respondent provided the following as his address of record: 1850 Conestoga Court, Merced 95348.

² Case No. 129051-2.

³ Case No. TM 113414 (A).

driving westbound on 11th Street in the City of Tracy when he slammed into a fire hydrant and a tree located near the north sidewalk. Respondent was disoriented and did not know how the accident occurred. His blood-alcohol level was measured at .24%. The Court ordered respondent to serve 12 days in jail and to pay fines, fees and restitution. He was granted a three-year probationary term and was ordered to refrain from excessive consumption of alcohol and not to operate a motor vehicle with any measurable amount of alcohol in his blood. He was also ordered to enroll in a nine-month first offender alcohol program.

Respondent's Subsequent Arrests

6. On May 24, 2009, one week after his second DUI conviction, respondent was arrested by the Merced Police Department for violation of Vehicle Code section 23152, subdivisions (a) and (b), section 14601.2, subdivision (A) (driving when privileges suspended or revoked for DUI) and section 21650 (use right side to drive except to pass/overtake other vehicle). Respondent was arrested after a police officer observed him driving a white SUV northbound on West Main Street in Merced. Respondent's vehicle straddled the number one and number two lanes for an entire block. Then the officer observed that the vehicle "swerved slowly and gradually in an ever increasing left to right movement" until it crossed over the solid dotted yellow line into the number one lane of opposing traffic. The officer initiated a traffic stop and administered field sobriety tests. Respondent performed poorly. He was arrested and the criminal matter is pending.

7. Three weeks later, on June 12, 2009, respondent was again arrested by the Merced Police Department. Respondent had been traveling on Highway 99 and had passed several vehicles at a high rate of speed. He passed the vehicles by driving on the center median. While passing vehicles, he sprayed rocks and gravel on the windshields of two vehicles, shattering the windshields. The victims called 911 and officers were directed to "be on the lookout" for respondent's vehicle. Several Officers then observed respondent driving over 65 miles per hour and using the center median to pass cars. Officers pulled respondent over. He admitted that his driver's license was suspended and that he had been driving at high speeds in an erratic manner. He apologized for this behavior and stated he was in a hurry to attend a graduation. He stated that he believed that a vehicle was trying to race with him and he was just trying to stay out of the other vehicle's way. He smelled of alcohol and was unable to satisfactorily perform field sobriety tests. Preliminary alcohol screening disclosed blood-alcohol levels of .131% and .141%. Respondent was arrested for driving under the influence and driving with a suspended license. The criminal matter is pending.

8. Two months later, on August 13, 2009, respondent was again arrested by the Merced Police Department for "driving under the influence while on DUI probation" and driving with knowledge that his driving privilege was suspended or revoked. He was also charged with failing to stop at a stop sign and having a brake light out. Respondent was apprehended after a patrol officer noticed respondent rolling to a stop sign without coming to

full and complete stop. The officer also noted that a brake light was out on respondent's vehicle. The officer initiated a traffic stop and noticed a strong odor of alcoholic beverages coming from the vehicle. Respondent had bloodshot and watery eyes and was unable to successfully complete field sobriety tests. Preliminary alcohol screening disclosed blood-alcohol contents of .10%. He was arrested and the criminal matter is pending.

9. On September 16, 2009, the Merced Police Department arrested respondent for drunk and disorderly conduct and disturbing the peace. The criminal matter is pending.

10. On October 3, 2009, the respondent was arrested and booked through the Stanislaus County Sheriff's Department for being drunk in public. The matter is pending.

11. Respondent explained that he has been going through a difficult time and that prior to November 2008 he had no DUI offenses. He was married for 13 years, and then went through a divorce that was finalized in November 2008. His first DUI conviction occurred following his return from his wife's "divorce party" in Richmond, and when he was stopped for speeding on his way home to Tracy, California. He noted that his second DUI occurred when he fell asleep at the wheel and hit a fire hydrant. He explained that his May 24, 2009 arrest occurred after he was out having a few drinks. Respondent thought that he had waited long enough, and that he had eaten enough food to allow him to drive safely. He suggested that he had been targeted by police. He acknowledged driving with a suspended license during the more recent arrests. Claimant explained that he was driving to his son's graduation on June 12, 2009, and that he did not realize that he was still intoxicated from drinking the evening before. And he noted that the September 16, 2009 arrest occurred when he was out on his birthday, alone, when he confronted someone who had made racist comments directed at him.

12. Respondent is no longer in possession of a car. He believes this will eliminate any temptation he would otherwise have to drive with a suspended license or while intoxicated. He is not working at this time. He formerly worked as an optometrist with Wal-Mart. He has also worked on call for Lens Crafter, but has not done so for at least a year. He does not believe that his personal problems and alcohol issues impact or otherwise carry over to his professional life as an optometrist.

13. Respondent acknowledges that he must do something about his alcohol problem. He does not consider himself to be an alcoholic and he continues to drink on a regular basis. He does not participate in any alcohol recovery program. He avers that he took steps to enroll in a court ordered program, but could not pay for it after he lost his job. He does not attend AA or similar programs that would be free or low cost. He did enroll in a church program for alcohol in 1998, and avers that he had abstained from drinking for 12 months.

14. Respondent avers that he is willing to do anything at this time to retain his professional license.

LEGAL CONCLUSIONS

Cause for Discipline

1. Business and Professions Code⁴ section 490 states, in relevant part:

[Any Board within the Department of Consumer Affairs] may suspend or revoke a license on the grounds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was granted. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

2. As set forth in the Factual Findings, complainant established by a preponderance of the evidence⁵ that respondent has been convicted of crimes which are substantially related to the qualifications, functions or duties of an optometrist. Respondent has sustained two convictions for driving under the influence of alcohol. These convictions evidence an inability to maintain sobriety and a complete disregard for the safety of others. Two criminal convictions for driving under the influence within a short time indicate respondent has problems with alcohol abuse. Alcohol abuse impairs good judgment which in turn has a direct relationship to the quality patient care. (*Grannis v. Board of Medical Quality Assurance* (1971) 19 Cal. App. 3d 551, 563, fn 13; see also; *In Re Kelley* (1990) 52 Cal.3d 487, 495; *In re Carr* (1988) 46 Cal.3d 1089.)

One who cannot maintain sobriety cannot be entrusted to practice optometry safely and responsibly. Accordingly, cause exists under section 490, to take disciplinary action against respondent's license, due to his criminal convictions.

3. Section 3110, provides that the Board may take disciplinary action against the licensed optometrist for general unprofessional conduct. Section 3110, subdivision (1), defines unprofessional conduct as:

... using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person... holding a license under this chapter, or to any other person, or to the public... or the conviction of a misdemeanor or felony involving the use, consumption, or self

⁴ All statutory references are to be California Business and Professions Code unless otherwise indicated.

⁵ The standard of proof required to obtain an interim order pursuant to section 494 is a preponderance of the evidence standard. (Section 494, subdivision (e).)

administration of any of the substances referred to in this subdivision... (e.g. alcohol).

4. As set forth in the Factual Findings, complainant established that respondent was convicted in 2009 of two misdemeanors involving the use and consumption of alcohol in 2008. Subsequently he was arrested four times in 2009 for driving under the influence and once in 2009 for drunk and disorderly conduct and disturbing the peace. Accordingly, cause exists under section 3110, subdivision (1), to take disciplinary action against respondent's license due to unprofessional conduct.

Issuance of Interim Suspension Order

5. Section 494, subdivision (a), provides for issuance of an interim order of suspension where: (1) the licentiate has engaged in acts or omissions constituting a violation of the Code; and (2) permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety or welfare. Section 494, subdivision (b), provides that no interim order shall be issued without notice⁶ to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

6. Complainant served respondent with notice of the ex-parte hearing, even though complainant intended this matter to proceed as an ex-parte petition. Service was made on September 28 and September 29, for an October 1, 2009 hearing, thus giving respondent 48 hours notice, rather than the 15 days notice required for a noticed proceeding.

Respondent has now appeared at this hearing. Complainant has established, by a preponderance of the evidence, that permitting respondent to continue to engage in the licensed activity, or permitting him to continue in the licensed activity without restrictions, would endanger the public health, safety or welfare.

7. As set forth in the Factual Findings, complainant demonstrated by a preponderance of the evidence that permitting respondent to continue practicing as an optometrist would endanger the public health, safety and welfare. Respondent has

⁶ Section 494, subdivision (c) provides:

Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice unless the licentiate waives his or her right to the hearing. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

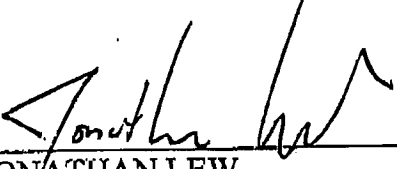
demonstrated a serious and debilitating problem with alcohol consumption and an inability to maintain sobriety. At hearing he indicated that he drank alcohol the weekend before and that he is not currently enrolled in any alcohol recovery program. There are no restrictions which could be placed on respondent to protect the public. Respondent has shown a repeated inability and unwillingness to abide by the orders of the criminal courts. Every indication is that he would not abide by restrictions issued by the Board. Serious injury would result if respondent were permitted to continue to practice optometry in his condition. Respondent does not recognize that his alcohol consumption is even related to his professional practice as an optometrist.

8. Pursuant to section 494, subdivision (e), respondent was entitled to a hearing on the petition within 20 days of the issuance of the Order issued by Judge Sarli to determine whether the Order shall remain in effect, be dissolved, or modified. The above matters having been considered, the suspension should remain in effect.

ORDER

Optometrist License No. TLP 12990, issued to Collin Hugh Vaughan is **SUSPENDED**. The Board of Optometry shall file an accusation within 15 days of the issuance of this order.

Dated: October 28, 2009



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE**Case Name: Vaughan, Collin Hugh****OAH No.: 2009100015**

I, Laura Gutierrez, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. On October 28, 2009, I served a copy of the following document(s) in the action entitled above:

ORDER ON PETITION FOR INTERIM SUSPENSION ORDER

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Jeffrey M Phillips
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Via US Mail and Fax- 916-327-8643

☒ **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Sacramento, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid [☐ by certified mail].

☒ **Fax Transmission.** I personally transmitted the above-described document(s) to the person(s) at the fax number(s) listed above, from fax machine number (916) 376-6349, pursuant to Government Code section 11440.20 and California Code of Regulations, title 1, section 1008, subdivision (d). The fax transmission was reported as complete and without error. A copy of the transmission report showing the date and time of transmission, properly issued by the transmitting machine, is attached to this declaration of service.

Collin Hugh Vaughan
1850 Conestoga Court
Merced, CA 95348
Via GSO

☒ **Overnight Delivery.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Sacramento, California on October 28, 2009.

/s/

Laura Gutierrez, Declarant

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition For
Interim Suspension Order by:

MONA MAGGIO, Executive Officer,
Board of Optometry
Department of Consumer Affairs
State of California,

Petitioner,

v.

COLLIN HUGH VAUGHAN
Merced, CA 95348

Optometrist License No. TLP 12990,

Respondent.

Case No. CC 2008-130

OAH No. 2009100015

**ORDER ON EX-PARTE PETITION
FOR INTERIM SUSPENSION
ORDER
(Business and Professions Code
section 494(b))**

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of
Administrative Hearings, heard this matter in Sacramento, California on October 1, 2009.

Jeffrey M. Phillips, Deputy Attorney General, represented petitioner Mona Maggio.

Respondent Collin Hugh Vaughan did not appear.

Documentary evidence and oral argument were received. The hearing was closed and
the matter was submitted on October 1, 2009.

FACTUAL FINDINGS

1. On October 1, 2009, Mona Maggio, Executive Officer of the Board of Optometry, Department of Consumer Affairs, State of California (Board), through Attorney General, Edmund G. Brown Jr. and Deputy Attorney General, Jeffrey M. Phillips, made and filed a Petition with the Office of Administrative Hearings. The Petition seeks an interim order suspending Optometrist License No. TPL 12990, pursuant to Business and Professions Code section 494, subdivision (c). Actual notice of the ex-parte hearing was served on respondent, at three separate addresses, including his current address of record with the Board, by overnight mail delivery on September 28, 2009 and September 29, 2009.

2. The Board issued Optometrist License (Certificate of Registration) No. TPL 12990 to respondent on May 15, 2006. Said license will expire on September 30, 2010 unless renewed.

Respondent's Criminal Convictions

3. On March 16, 2009, in Alameda County Superior Court,¹ respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol content of 0.8% or more (DUI)). The facts and circumstances of respondent's March 16, 2009, DUI conviction were that on November 11, 2008, at 12:30 a.m., Dublin CHP officers observed respondent driving in the number one lane and passing surrounding traffic at 92 miles per hour in a 65 miles per hour zone. The officers observed as respondent crossed over the solid yellow line to his left by one tire width for approximately three seconds before re-entering the number one lane. They initiated a stop and upon approaching the vehicle noted the odor of alcohol. Respondent's eyes were red and watery and his speech was slowed. He admitted he had two beers and a vodka screwdriver. One of the officers explained and demonstrated field sobriety tests. Respondent was unable to perform the field sobriety tests. Initial alcohol testing disclosed a blood-alcohol level of .118 (1.18%). Blood alcohol testing at 1:22 a.m. disclose a blood-alcohol level of .10 %.

4. The Court sentenced respondent to serve three days in jail and pay fines. He was granted probation for a term of three years. Pursuant to the terms and conditions of probation, respondent was ordered not to drink alcoholic beverages to excess and not to drive with any measurable amount of alcohol in his blood. He was also ordered to attend and complete "driving under the influence traffic school."

5. On May 18, 2009, in the San Joaquin County Superior Court,² respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b). This conviction arose from a February 28, 2008, arrest by Tracy Police

¹ Case No. 129051-2.

² Case No. TM 113414 (A).

Department Officers after respondent was involved in a collision. Respondent had been driving westbound on 11th Street in the City of Tracy when he slammed into a fire hydrant and a tree located near the north sidewalk. Respondent was disoriented and did not know how the accident occurred. His blood-alcohol level was measured at .24%. The Court ordered respondent to serve 12 days in jail and to pay fines, fees and restitution. He was granted a three-year probationary term and was ordered to refrain from excessive consumption of alcohol and not to operate a motor vehicle with any measurable amount of alcohol in his blood. He was also ordered to enroll in a nine-month first offender alcohol program.

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6. On May 24, 2009, one week after his second DUI conviction, respondent was arrested by the Merced Police Department for violation of Vehicle Code section 23152, subdivisions (a) and (b), section 14601.2, subdivision (A) (driving when privileges suspended or revoked for DUI) and section 21650 (use right side to drive except to pass/overtake other vehicle). Respondent was arrested after a police officer observed him driving a white SUV northbound on West Main St in Merced. Respondent's vehicle straddled the number one and number two lanes for an entire block. Then the officer observed that the vehicle "swerved slowly and gradually in an ever increasing left to right movement" until it crossed over the solid dotted yellow line into the number one lane of opposing traffic. The officer initiated a traffic stop and administered field sobriety tests. Respondent performed poorly. He was arrested and the criminal matter is pending.

7. Three weeks later, on June 12, 2009, respondent was again arrested by the Merced Police Department. Respondent had been traveling on Highway 99 and had passed several vehicles at a high rate of speed. He passed the vehicles by driving on the center median. While passing vehicles, he sprayed rocks and gravel on the windshields of two vehicles, shattering the windshields. The victims called 911 and officers were directed to "be on the lookout" for respondent's vehicle. Several Officers then observed respondent driving over 65 miles per hour and using the center median to pass cars. Officers pulled respondent over. He admitted that his driver's license was suspended and that he had been driving at high speeds in an erratic manner. He apologized for this behavior and stated he was in a hurry to attend a graduation. He stated that he believed that a vehicle was trying to race with him and he was just trying to stay out of the other vehicle's way. He smelled of alcohol and was unable to satisfactorily perform field sobriety tests. Preliminary alcohol screening disclosed blood-alcohol levels of .131% and .141%. Respondent was arrested for driving under the influence and driving with a suspended license. The criminal matter is pending.

8. Two months later, on August 13, 2009, respondent was again arrested by the Merced Police Department for "driving under the influence while on DUI probation" and driving with knowledge that his driving privilege was suspended or revoked. He was also charged with failing to stop at a stop sign and having a brake light out. Respondent was

apprehended after a patrol officer noticed respondent rolling to a stop sign without coming to full and complete stop. The officer also noted that a brake light was out on respondent's vehicle. The officer initiated a traffic stop and noticed a strong odor of alcoholic beverages coming from the vehicle. Respondent had bloodshot and watery eyes and was unable to successfully complete field sobriety tests. Preliminary alcohol screening disclosed blood-alcohol contents of .10%. He was arrested and the criminal matter is pending.

9. On September 16, 2009, the Merced Police Department arrested respondent for drunk and disorderly conduct and disturbing the peace. The criminal matter is pending.

LEGAL CONCLUSIONS

Cause for Discipline

1. Business and Professions Code³ section 490 states, in relevant part:

[Any Board within the Department of Consumer Affairs] may suspend or revoke a license on the grounds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was granted. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

2. As set forth in the Factual Findings, complainant established by a preponderance of the evidence⁴ that respondent has been convicted of crimes which are substantially related to the qualifications, functions or duties of an optometrist. Respondent has sustained two convictions for driving under the influence of alcohol. These convictions evidence an inability to maintain sobriety and a complete disregard for the safety of others. Two criminal convictions for driving under the influence within a short time indicate respondent has problems with alcohol abuse. Alcohol abuse impairs good judgment which in turn has a direct relationship to the quality patient care. (*Grannis v. Board of Medical Quality Assurance* (1971) 19 Cal. App. 3d 551, 563, fn 13; (See also; *In Re Kelley* (1990) 52 Cal. 3d 487, 495; *In re Carr* (1988) 46 Cal. 3d 1089.) One who cannot maintain sobriety cannot be entrusted to practice optometry safely and responsibly. Accordingly, cause exists under section 490, to take disciplinary action against respondent's license, due to his criminal convictions.

³ All statutory references are to be California Business and Professions Code unless otherwise indicated.

⁴ The standard of proof required to obtain an interim order pursuant to section 494 is a preponderance of the evidence standard. (Section 494, subdivision (e).)

3. Section 3110, provides that the Board may take disciplinary action against the licensed optometrist for general unprofessional conduct. Section 3110, subdivision (1), defines unprofessional conduct as:

... using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person... holding a license under this chapter, or to any other person, or to the public... or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision... (e.g. alcohol).

4. As set forth in the Factual Findings, complainant established that respondent was convicted in 2009 of two misdemeanors involving the use and consumption of alcohol in 2008. Subsequently he was arrested three times in 2009 for driving under the influence and once in 2009 for drunk and disorderly conduct and disturbing the peace. Accordingly, cause exists under section 3110, subdivision (1), to take disciplinary action against respondent's license due to unprofessional conduct.

Issuance of Ex-Parte Interim Suspension Order

5. Section 494, subdivision (a), provides for issuance of an interim order of suspension where: (1) the licentiate has engaged in acts or omissions constituting a violation of the Code; and (2) permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety or welfare. Section 494, subdivision (b), provides that no interim order shall be issued without notice⁵ to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

⁵ Section 494, subdivision (c) provides:

Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice unless the licentiate waives his or her right to the hearing. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

6. Here, complainant served respondent with notice of the ex-parte hearing, even though complainant intended this matter to proceed as an ex-parte petition. Service was made on September 28 and September 29, for an October 1, 2009 hearing, thus giving respondent 48 hours notice, rather than the 15 days notice required for a noticed proceeding. Accordingly, complainant must establish by a preponderance of the evidence, that permitting respondent to continue to engage in the licensed activity, or permitting him to continue in the licensed activity without restrictions, would endanger the public health, safety or welfare. Complainant must also establish that serious injury would result to the public before the matter could be heard on notice.

7. As set forth in the Factual Findings, complainant demonstrated by a preponderance of the evidence that permitting respondent to continue practicing as an optometrist would endanger the public health, safety and welfare. Respondent has demonstrated a serious and debilitating problem with alcohol consumption and an inability to maintain sobriety. There are no restrictions which could be placed on respondent to protect the public. Respondent has shown a repeated inability and unwillingness to abide by the orders of the criminal courts. Every indication is that he would not abide by restrictions issued by the Board. Serious injury would result if respondent were permitted to continue to practice optometry in his condition.

8. Pursuant to section 494, subdivision (c), respondent is entitled to a hearing on the petition within 20 days of the issuance of the below interim order without notice.⁶

⁶ The hearing shall be conducted pursuant to section 494, subdivisions (d) and (e), which provides:

(d) At the hearing on the petition for an interim order, the licentiate may:

- (1) Be represented by counsel.
- (2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.
- (3) Present affidavits and other documentary evidence.
- (4) Present oral argument.

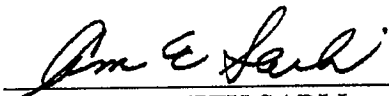
(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

ORDER

Optometrist License No. TLP 12990, issued to Collin Hugh Vaughan is
SUSPENDED.

A hearing on the Petition for Interim Suspension Order is set for October 26, 2009, at 1 p.m. at the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200, Sacramento, California, 95833. A Notice of Hearing is served on the parties with service of this Order of Suspension.

Dated: October 6, 2009


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

Pursuant to section 494 subdivision (f), the board shall file an accusation within 15 days of the issuance of the interim order after a noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in subdivision (f) shall dissolve the interim order by operation of law.

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART,
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS, State Bar No. 154990
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7 Attorneys for Board of Optometry
8

9 **BEFORE THE**
10 **BOARD OF OPTOMETRY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 MONA MAGGIO, Executive Officer,
BOARD OF OPTOMETRY,
13 DEPARTMENT OF CONSUMER AFFAIRS,
STATE OF CALIFORNIA,

14 Petitioner,

15 v.

16 COLLIN HUGH VAUGHAN
3055 Loughborough Drive
17 Merced, CA 95348

18 Optometrist License No. TPL 12990

19 Respondent.
20

OAH Case No.: _____

BOO Cases No. CC 2008-103,
2008-155, 2008-158, and 2008-
224

**PETITION AND
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PETITION FOR
INTERIM SUSPENSION
ORDER**

Date: October 1, 2009
Time: 1:30 p.m.
Location: OAH - Sacramento

21 **PETITION FOR INTERIM SUSPENSION ORDER**

22 Petitioner, Mona Maggio, Executive Officer of the Board of Optometry, (hereinafter
23 "Board"), Department of Consumer Affairs, State of California, hereby files this Petition and
24 Memorandum of Points and Authorities in support of her Petition for an Interim Suspension
25 Order. For all the reasons set forth herein below, the requested Interim Order of suspension
26 should issue against Collin Hugh Vaughan, California Optometrist License No. TPL12990
27 (hereinafter "Respondent"). Respondent has violated the Optometry Practice Act, and is subject
28 to disciplinary action, as discussed below. Petitioner is prepared to file an Accusation in

1 compliance with the requirements of Business and Professions Code section 494 and petitioner
2 stands ready to proceed to an administrative hearing on the merits of the charges and allegations
3 to be contained therein.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **STATEMENT OF FACTS**

6 Respondent Collin Hugh Vaughan was issued Optometry License No. TPL 12990 on May
7 15, 2006. (Decl. Phillips, Exh. 1). This license will expire on September 30, 2010, unless
8 renewed. (*Id.*) In the year 2009, Respondent was convicted twice of driving under the influence
9 of drugs and/or alcohol ("DUI"). Subsequent to these two convictions, Respondent has been
10 arrested four (4) times on charges related to the illegal use of alcohol (3 DUIs and 1 drunk/
11 disorderly conduct).¹¹

12 **1. First DUI Conviction**

13 On March 16, 2009, Respondent was convicted of violating Vehicle Code section 23152(b)
14 (driving with blood alcohol content of 0.8 % or more) in Alameda County Superior Court Case
15 No. 129051-2 (Decl. Phillips, Exh. 2), based on his no contest plea. This conviction was based
16 on Respondent's DUI arrest at 0030 hours on November 11, 2008 by Dublin California Highway
17 Patrol State Traffic Officers. (Decl. Phillips, Exh. 3).

18 **2. Second DUI Conviction**

19 On May 18, 2009, Respondent was convicted of violating Vehicle Code section 23152(b)
20 (driving with blood alcohol content of 0.8 % or more) in San Joaquin County Superior Court
21 Case No. TM 113414(A) (Decl. Phillips, Exh. 4), based on his no contest plea. This conviction
22 was based on Respondent's DUI arrest at 0211 hours on February 28, 2008 by Tracy Police
23 Department Officers. (Decl. Phillips, Exh. 5).

24 **3. Third DUI Arrest**

25 One week after his second DUI conviction, on May 24, 2009, Respondent was arrested by
26 the Merced Police Department for DUI. (Decl. Phillips, Exh. 6). This matter is still pending.
27 (*Id.*)

28 1. Respondent was convicted of domestic violence in July 1996, prior to licensure.

1 **4. Fourth DUI Arrest**

2 Three weeks later, on June 12, 2009, Respondent was arrested by the Merced Police
3 Department for DUI. (Decl. Phillips, Exh. 7). This matter is still pending. (Id.)

4 **5. Fifth DUI Arrest**

5 On August 13, 2009, Respondent was arrested by the Merced Police Department for DUI.
6 (Decl. Phillips, Exh. 8). This matter is still pending. (Id.)

7 **6. Sixth Alcohol Related Arrest**

8 On September 16, 2009, Respondent was arrested for by the Merced Police Department
9 for drunk and disorderly conduct and disturbing the peace. This matter is still pending. (Id.)

10 **I. THIS COURT HAS AUTHORITY TO ISSUE THE REQUESTED ORDER**

11 An administrative law judge has authority pursuant to Business and Professions
12 Code (hereinafter "Code") section 494 to issue an interim suspension order.

13 Code section 494 states, in relevant part:

14 (a) A board or an administrative law judge sitting alone, as provided in
15 subdivision (h), may, upon petition, issue an interim order suspending any
16 licentiate or imposing license restrictions, including, but not limited to, mandatory
biological fluid testing, supervision, or remedial training. The petition shall
include affidavits that demonstrate, to the satisfaction of the board, both of the following:

17 (1) The licentiate has engaged in acts or omissions constituting a violation of this
18 code or has been convicted of a crime substantially related to the licensed activity.

19 (2) Permitting the licentiate to continue to engage in the licensed activity, or
20 permitting the licentiate to continue in the licensed activity without restrictions,
would endanger the public health, safety, or welfare.

21 This court may issue an interim suspension on an ex parte basis, without prior notice to
22 respondent, pursuant to section 494 (b), which states: "No interim order provided for in this
23 section shall be issued without notice to the licentiate unless it appears from the petition and
24 supporting documents that serious injury would result to the public before the matter could be
25 heard on notice.

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1 **II. RESPONDENT IS SUBJECT TO DISCIPLINE FOR UNPROFESSIONAL**
2 **CONDUCT IN VIOLATION OF THE BUSINESS AND PROFESSIONS CODE**

3 The first element that must be proven in order to issue an ISO is that Respondent has
4 engaged in acts or omissions constituting a violation of this code or has been convicted of a
5 crime substantially related to the licensed activity.

6 Code section 490 states, in relevant part:

7 Any Board within the Department of Consumer Affairs "may
8 suspend or revoke a license on the grounds that the licensee has
9 been convicted of a crime, if the crime is substantially related to
10 the qualifications, functions, or duties of the business or profession
for which the license was issued. A conviction within the meaning
following a plea of guilty or a conviction
following a plea of nolo contendere.

11 The Board of Optometry may take disciplinary action against a licensed optometrist for
12 general unprofessional conduct pursuant to Code section 3110. Specifically, Code section 3110,
13 subsection (1) defines unprofessional conduct as:

14 . . . using alcoholic beverages to the extent, or in a manner, as to be
15 dangerous or injurious to the person. . . holding a license under this
16 chapter; or to any other person, or to the public. . . or the
17 conviction of a misdemeanor or felony involving the use,
consumption, or self-administration of any of the substances
referred to in this subdivision. . . (e.g. alcohol)

18 There is no question that the Board has authority to take disciplinary action against
19 Respondent's license based on two DUI convictions. Since that time, the Board received arrest
20 notifications for Respondent's arrests on 5/24/09, 6/12/09, 8/13/09, and 9/16/09, all of which
21 involve the use of alcoholic beverages to the extent and in a manner that is dangerous and
22 injurious to Respondent and the public. Based on these four recent arrests, coupled with the two
23 convictions, the Board determined this matter to be urgent in order to protect the public and
24 requested that the AGO make this ISO appearance.

25 Clearly, these two convictions and four subsequent DUI arrests are acts constituting
26 unprofessional conduct, which are in themselves separate violations of the Optometry Practices
27 Act under Code section 3110(1).

28 In addition, well established case law also holds that criminal convictions and conduct

1 relating to the use and abuse of alcohol in a manner that is dangerous or injurious to the person or
2 the general public is conduct that is substantially related to the qualifications, functions, or duties
3 of the of the business or profession for which the license was issued.

4 In *Grannis v. Board of Medical Quality Assurance* (1971) 19 Cal.App.3d 551, the court
5 of appeals upheld the Medical Board's discipline a physician on the basis of two DUI
6 misdemeanor convictions and the testimony of a psychiatrist who established that Grannis was an
7 alcoholic. Although Dr. Grannis established that at no time had his alcoholism impaired his
8 professional competency, the court determined that discipline was nevertheless warranted based
9 on the fact that his alcohol abuse impaired his good judgment, which in turn would have a direct
10 relationship to the quality of patient care..." (19 Cal.App.3d at 563, fn 13.)

11 In *In re Car* (1988) 46 Cal.3d 1089, the Supreme Court upheld the State Bar's two year
12 suspension of an attorney from the practice of law, based on two DUI misdemeanor convictions.

13 In *In re Kelley* (1990) 52 Cal.3d 487 the Supreme Court upheld the discipline by the State
14 Bar based on two misdemeanor DUI convictions that were 31 months apart. Respondent's Blood
15 Alcohol Content ("BAC") measured between .16 and .17 during the second arrest. The Court
16 concluded that Kelley's two DUI convictions within a 31-month period indicated problems with
17 alcohol abuse. Kelley argued that these two DUI convictions did not involve the practice of law,
18 that she had not abused alcohol in a manner interfering with the practice of law, and was a
19 competent attorney of good moral character. In rejecting these arguments and upholding
20 discipline against the license, the Supreme Court found that Kelley "demonstrated a complete
21 disregard for the conditions of her probation, the law, and the safety of the public." (52 Cal.3d at
22 495.) The court concluded that Kelley's "repeated criminal conduct, and the circumstances
23 surrounding it, are indications of alcohol abuse that is adversely affecting petitioner's private life.
24 We cannot and should not sit back and wait until petitioner's alcohol abuse problem begins to
25 affect her practice of law. [citation]" (52 Cal.3d at 495)

26 In *Griffiths v. Superior Court* (2002) 96 Cal.App .4th 757, the Court of Appeals upheld
27 the Medical Board's suspension of a license to practice medicine based on three DUI
28 misdemeanor convictions. The arrests were 32 and 23 months apart, respectively, with the BAC

1 being .11% at the first and third arrest. Dr. Griffiths argued that the discipline was invalid
2 "because no evidence showed his alcohol use impaired his medical practice." (96 Cal.App.4th at
3 p. 771.) "We reject this argument because it overlooks the preventative functions of license
4 discipline, whose main purpose is protection of the public [citation], but whose purposes also
5 include prevention of future harm [citation] and the improvement and rehabilitation of the
6 physician [citation]. To prohibit license discipline until the physician-licensee harms a patient
7 disregards these purposes; it is far more desirable to discipline before a licensee harms any
8 patient than after harm has occurred." (Ibid., fn. omitted.)

9 The court further explained, "[c]onvictions involving alcohol consumption reflect a lack
10 of sound professional and personal judgment that is relevant to a physician's fitness and
11 competence to practice medicine. Alcohol consumption quickly affects normal driving ability,
12 and driving under the influence of alcohol threatens personal safety and places the safety of the
13 public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of
14 alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the
15 ability to judge speed, dimensions, and distance." (Id. at p. 770.) That the physician drove under
16 the influence of alcohol demonstrated his inability or unwillingness to follow the law. (Ibid.)
17 Further, multiple convictions for alcohol use "reflect[ed] poorly on [the physician's] common
18 sense and professional judgment, which are essential to the practice of medicine." (Id. at 771)
19 "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and
20 integrity are deeply and daily involved in various aspects of the practice." [Citation.] (Id. at 772.)

21 Within the past year, Respondent has had two alcohol-related convictions and four
22 additional arrests involving the use and abuse of alcohol. These incidents demonstrate an
23 extreme alcohol abuse problem, and a lack of basic common sense and any sound professional
24 judgment. These repeated violations of the law and violations of the terms of Respondent's
25 criminal probation demonstrate a total lack of judgment and impairment that is directly relevant
26 to his fitness, competence, and safety to practice optometry.

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1 **II. SERIOUS INJURY WILL RESULT TO THE PUBLIC IF RESPONDENT IS NOT**
2 **SUSPENDED**

3 Turning to the second factor, Petitioner must show that permitting the licentiate to
4 continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed
5 activity without restrictions, would endanger the public health, safety, or welfare. The facts
6 speak for themselves, and do not bear repeating. It is clear that Petitioner, on behalf of the
7 People of California, would be subjected to the intolerable risk of severe injury to the public,
8 patients, and himself, if Respondent is allowed to continue to practice optometry.

9 The Board's paramount duty is to protect the public from harm. (Bus. & Prof. Code
10 section 3010.1). Petitioner is not required to wait until patients or the public are actually harmed,
11 or further harm is incurred, before taking action. (*Griffiths v. Superior Court* (2002) 96
12 Cal.App.4th 757, 772) In that Respondent has demonstrated an unwillingness or inability to
13 comply with the law, with his terms of probation to abstain from alcohol use, or basic common
14 sense, he must be suspended from the practice of optometry, and immediately focus all of his
15 attention and energy to alcohol abuse treatment, under the supervision of the Board of
16 Optometry, or further serious injury will result. Respondent's continued practice puts the public
17 at risk, necessitating the issuance of an interim suspension order, on an ex parte basis.

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1 CONCLUSION

2 Respondent poses a real and immanent threat to the public based on his recent and
3 escalating pattern of abusing alcohol. Respondent's license must be immediately suspended until
4 an administrative action can be held to determine whether he should continue to practice
5 optometry, and, if so, under what conditions. For these and all other reasons stated above, and in
6 furtherance of Petitioner's legislative mandate to protect the public, Petitioner respectfully
7 requests that the Office of Administrative Hearings issue an interim order suspending
8 Optometrist License No. TPL 12990, issued to Respondent Collin Hugh Vaughan.

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10 Dated: October 1, 2009.

Respectfully submitted,

11 EDMUND G. BROWN JR.,
12 Attorney General of the State of California

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14 JEFFREY M. PHILLIPS
15 Deputy Attorney General
16 Attorneys for Complainant

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